

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: JON CHRISTOPHER EVANS

**CHAPTER 7
CASE NO: 09-03763-NPO**

Jointly Administered with Related Cases

G & B INVESTMENTS, INC.

PLAINTIFF

V.

ADVERSARY PROCEEDING NO. 10-00040-NPO

**DEREK A. HENDERSON, CHAPTER 7 TRUSTEE
FOR THE BANKRUPTCY ESTATE OF JON
CHRISTOPHER EVANS, ET AL.**

DEFENDANTS

**MOTION TO DISMISS TITLE COMPANIES' MOTION FOR DECLARATORY
JUDGMENT**

Cross-Claimant Bank of Forest ("BOF") hereby moves this Court to dismiss as procedurally improper the Motion for Declaratory Judgment (Dkt. No. 280) filed in this matter by Mississippi Valley Title Insurance Company and Old Republic National Title Insurance Company (the "Title Companies"). In support of its motion, BOF states:

1. On December 22, 2010, the Title Companies filed a motion seeking a declaratory judgment regarding the rights and obligations existing between BOF and the Title Companies pursuant to the title commitment issued by the Title Companies prior to the closing of the 2009 White Oaks Loan.
2. Bankruptcy Rule 7001 includes actions seeking declaratory relief among the types of actions that must be brought as adversary proceedings, rather than as contested matters. *See* Federal Rule of Bankruptcy Procedure 7001(9).
3. The Fifth Circuit Court of Appeals, as well as numerous bankruptcy courts nationwide, have repeatedly held that the filing of an adversary proceeding is the exclusive procedural mechanism by which a party may pursue the types of actions enumerated in

Bankruptcy Rule 7001. *See In re Haber Oil Co., Inc.*, 12 F.3d 426, 437-38 (5th Cir. 1994); *In re Commercial Financial Services, Inc.*, 268 B.R. 579, 591-92 (Bankr.N.D.Okla. 2001); *In re Kimmel*, 367 B.R. 166, 174 (Bankr.N.D.Cal. 2007); *Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990); *In re DBSI, Inc.*, 432 B.R. 126, 134-35 (Bankr.D.Del. 2010).

4. “A motion seeking relief that which the rules require to be sought through an adversary proceeding should be dismissed.” *In re Viney*, 369 B.R. 392, 393 (Bankr.N.D.Ind. 2007)(citing *Matter of Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990)). Where the relief sought by a party through “falls clearly within the types of proceedings specified by Bankruptcy Rule 7001 to be adversary proceedings”, the motion “will be denied as procedurally improper.” *In re DBSI, Inc.*, 422 B.R. 126, 135. (Bankr.D.Del. 2010).

WHEREFORE, PREMISES CONSIDERED, BOF respectfully requests that the Court dismiss the Title Companies’ Motion for Declaratory Judgment or, alternatively, deny the motion as procedurally improper.

Dated this the 30th day of December, 2010.

/s/ W. Lawrence Deas, Esq.

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CERTIFICATE OF SERVICE

I, W. Lawrence Deas, hereby certify that on December 30, 2010, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the parties set forth in the Electronic Mail Notice List as of the date hereof, including the following:

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/s/W. Lawrence Deas

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